IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.535-SB of 1995

Date of Decision: April 24, 2007

Balwant Singh

...Appellant

VERSUS

The State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Bipan Ghai, Advocate,
for the appellant.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

*****

RANJIT SINGH, J.

This order will dispose of Criminal Appeal No.535-SB of 1995 (Balwant Singh Vs. The State of Punjab) and Criminal Revision No.782 of 1995 (Baldev Singh Vs. Balwant Singh). The facts are being taken from Criminal Appeal No.535-SB of 1995.

Sole appellant Balwant Singh is in appeal against his conviction for an offence under Section 307 IPC and award of sentence of seven years RI

coupled with fine of Rs.5000/-, in default of which he was further directed to undergo RI for one year. The complainant, on the other hand, is in revision seeking enhancement of the sentence awarded to the appellant.

The facts, in brief, revealing the prosecution story, are that on 5.2.1988 at about 3.30 A.M. Baldev Singh alongwith his brother Gurdev Singh accompanied by their Siri Ludhar Singh were proceeding towards their field for irrigating these. When they reached near the field of one Mohinder Singh, they saw Balwant Singh armed with gun, Gurdial Singh and Major Singh both armed with gandas standing there. Gurdial Singh raised a lalkara saying that the complainant party be not allowed to escape, whereupon Balwant Singh fired a shot from his double barrel gun at Baldev Singh hitting him on his right arm and right waist. Baldev Singh complainant and Gurdev Singh ran away from the spot to save themselves, but were followed by the accused persons upto a distance of 1/1-1/2 acres (kilas). They were also abusing the complainant. Baldev Singh and Gurdev Singh escaped to the house of Gurdev Singh from where Gurdev Singh was taken to Civil Hospital, Mansa, where he was medically examined. Motive behind this occurrence, as alleged, is that the accused persons had caused injuries to Nachattar Singh, brother of Baldev Singh PW and the accused party was wanting them to effect a compromise under pressure, which was not accepted. FIR was registered on the statement made by Baldev Singh. The police conducted investigation into the case, ultimately leading to charge sheet of the appellant and other accused under Sections 307/34 IPC.

The prosecution examined Baldev Singh and Gurdev Singh besides Dr.R.K.Garg, Patwari Harnek Singh and ASI Joginder Singh. The prosecution evidence, however, was closed vide order dated 3.6.1995, when it failed to conclude its evidence despite numerous opportunities on the ground that the incident was of 1988 for which charge was framed on 14.6.1990, but the evidence was not concluded even till June, 1995. Considering the evidence led by the prosecution, the trial court found that the prosecution was able to prove its case against Balwant Singh accused beyond reasonable doubt and accordingly held him guilty under Section 307 IPC. Gurdial Singh and Major Singh, however, were acquitted by the trial court on the ground that prosecution could not prove the case against them beyond reasonable doubt.

I have heard the counsel for the parties.

The counsel for the appellant has drawn my attention to the fact that the appellant alongwith his co-accused was found innocent by the police during investigation and cancellation report was also prepared in this regard. He would refer to the evidence of DW-1 Karamjit Singh and DW-2 Janak Singh to point out that DW-1 had submitted his report to D.S.P. on 9.5.1988 recommending cancellation of the case being false. The counsel would draw attention to the depositions of D.S.P. Sukhchain Singh, D.S.P. Jarnail Singh and S.P.Mohinder Pal Singh to point out that they had also agreed with this report and case for cancellation was accordingly sent to Illaqa Magistrate.

These submissions were made before the trial court. The trial court, in my view, rightly did not accept this line of argument

raised by the defence. As can be seen from the evidence, the further investigation in this case leading to filing of cancellation report appears to have been done with the purpose. Karamjit Singh DSP, who had conducted the further investigation, conceded before the court that he did not record the statement of any person, whom he had joined in investigation under Section 161 Cr.P.C. It is also noticeable that all these police officials, while conducting further investigation of the case, did not associate the injured-eye-witnesses with the investigation. Under these circumstances, the finding of the Investigating Officers that the case was false or needed to be cancelled, cannot be sustained. This is a case where eye-witness is an injured with the fire arm. No explanation is forthcoming in regard to cause of this injury. During further investigation, no attempt apparent or otherwise seems to have been made to explain the injuries. Under these circumstances, no fault can be found with the action of the trial court in not accepting the submission of the defence. In any case, the result of investigation, which may even be of filing of cancellation report, cannot bind the trial court, which is to decide the case on the basis of evidence led before the court. The investigation report conducted by a police otherwise also cannot have a binding effect on the trial court, which is required to decide the case on the basis of evidence that is led before it. The case of the prosecution was duly supported by the eye-witnesses, who were injured. Despite a reasonably lengthy cross-examination of the witnesses, nothing substantial could be pointed out to reveal any false implication of the appellant. The trial court, apparently has assessed and examined the entire prosecution case very fairly and

returned the verdict of acquittal in respect of two of the accused, who were not attributed any specific role or injury. The delay aspect, highlighted by the counsel for the appellant in lodging the FIR, was also taken into consideration while acquitting two of the co-accused of the appellant. The delay in lodging the FIR otherwise in itself was rightly not considered fatal to the case of prosecution in the background that the injured was declared unfit to make a statement by the doctor and his statement could be recorded only once he was declared fit to do so. Apart from the act of the police in filing the cancellation report, no substantial submissions otherwise were made by the counsel for the appellant in support of his stand and against the verdict of sentence of the appellant as recorded by the trial court. This aspect has sufficiently been considered. I do not see any infirmity in the findings recorded by the trial court on this count.

The counsel for the appellant then pleaded for leniency. He would say that the incident is of the year 1988 and the appellant faced a protracted and fairly long prosecution till he was convicted in the year 1995. His appeal is pending since then. The sentence awarded to the appellant is suspended since October 12, 1995. The counsel would accordingly contend that asking the appellant now to undergo this sentence after a lapse of 19 years would sound rather harsh. He has drawn my attention to the case of ***Gulab Singh and another Vs. State of Punjab, 2004(1) R.C.R.(Criminal) 756*** to say that under almost similar circumstances and for similar nature of offence, sentence awarded to the appellant was reduced to a period undergone considering the incident being old. In Gulab Singh's case (supra), the appellant was convicted for an offence under Sections

307/323 IPC and finding the incident to be 12 years old, the sentence awarded in this case was reduced to period already undergone, which was about 3-1/2 months. This court in the case of Gulab Singh (supra), has referred to the cases of Karamjit Singh Vs. State (Delhi Admn.) 2000(3) RCR (Cr.) 561, Tarak Nath Singh and another Vs. State of West Bengal, 1998(1) Supreme Court Cases (Criminal) 587, State of Punjab Vs. Gurmail Singh, 2002(2) RCR (Criminal) 600, Chhota Singh Vs. State of Punjab, 1998(1) RCR (Criminal) 467 and Baldev Singh and another Vs. State of Punjab, AIR 1996 Supreme Court 372. In Karamjit Singh's case (supra), the Hon'ble Supreme Court went on to observe as under:-

> “In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a

person who has been found to have committed offence in the facts and circumstances placed on record would only have hardening attitude towards his fellow beings and towards society at large. Such a situation has to be avoided, again within the permissible limits of law."

In Tarak Nath Singh's case (supra), delay of 18 years till the time of decision of the appeal was considered enough to reduce the sentence to a period already undergone. Similarly, this court in the cases of Gurmail Singh and Chhota Singh (supra), reduced the sentence to a period already undergone keeping in view the fact that the incident was old.

There are different theories in regard to the purpose of punishment. Some say this is meant to reform the errant, whereas others would term this to be a punitive in nature. It can, however, be noticed that in tune with the current trends prevailing in civilised society, reformatory approach is being preferred. Apart from other considerations, the courts are to answer the question of punishment not totally untouched by current humane criterion. The courts are not required to be swayed by the fact that the gravity of the crime and the tariff prescribed in the Penal Code would have a monopolistic hold on it. The court is to take into account that human delinquent and not the criminal deviance is the cynosure of the punitive processing. It is said that crime is like a disease and correction not cruelty would have the dominance in sentencing calculus. These aspects and the delay in disposal of the present case making the appellant to face the agony of sentence and prosecution starring at him for such a long period, would make it a fit case to consider and

show some compassion to the appellant, notwithstanding the revision filed by the complainant seeking enhancement of the punishment.

Accordingly, while dismissing the appeal filed by the appellant, I am inclined to reduce the sentence of rigorous imprisonment to period already undergone by the appellant. The appellant, however, will pay a fine of Rs.25,000/- instead of Rs.5,000/-, as already awarded, and would undergo a period of two years rigorous imprisonment in case of default of payment of fine. The fine, so realised, would be deposited with the trial court within two months, which would be disbursed to the complainant/his legal heirs.

April 24, 2007 (RANJIT SINGH)
ramesh JUDGE